

Remarks

This Amendment is in response to the Office Action dated **December 15, 2009**.

This action is non final. Claims 26-36 are rejected under 35 U.S.C. § 103 as being obvious over Hillstead US 5,019,085 (hereafter "Hillstead") in view of Kanazawa (JP 07024072) (hereafter "Kanazawa"). The office action rejection is *traversed*.

The Office Action alleges that Hillstead discloses "an elongate tubular stent formed of a helically wound wire with *nested* wire waves (col. 4, lines 4-10; Fig. 3) having varying amplitude" and "the stent may be constructed into various patterns from a single, continuous helically wound wire (Fig. 3)." (Emphasis added) Applicants disagree. Under *Jockmus v. Leviton*, 28 F.2d 812 (2d Cir. 1928), "the figure must show all the claimed structural features and how they are put together." MPEP § 2125.

Claim 26 recites:

An intraluminal device for implantation into a body lumen comprising:
an elongate tubular stent formed of a helically wound wire defining a plurality of wire waves wherein said wire waves are longitudinally *nested* within each other to reduce the space between said wire waves so as to inhibit tissue ingrowth between the waves; and a lumen containing a cover extending along the length of the stent that further inhibits tissue ingrowth therethrough. (Emphasis added)

In the present application the claim term nested is described in the specification as follows:

The pitch or spacing between longitudinally adjacent windings 24 is less than 2A i.e. the peak-to-peak amplitude. As long as the pitch remains less than 2A each longitudinally adjacent winding 24 will be nested within the wave formed the previously formed winding 24. (¶ 0027, Fig. 4 and 5)

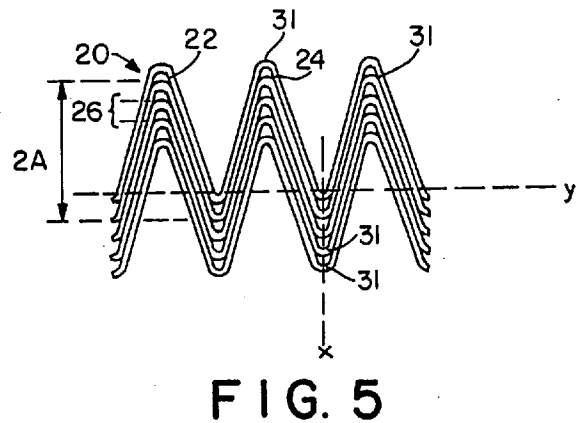


FIG. 3

Kanazawa discloses a tubular stent structure formed by wound stainless lines 9 and a ring wire 10 connecting the peaks of the windings. (¶ 0014, Fig. 2) However, Kanazawa does not teach or suggest a stent with "nested" wire waves under the meaning of this application.

Id.

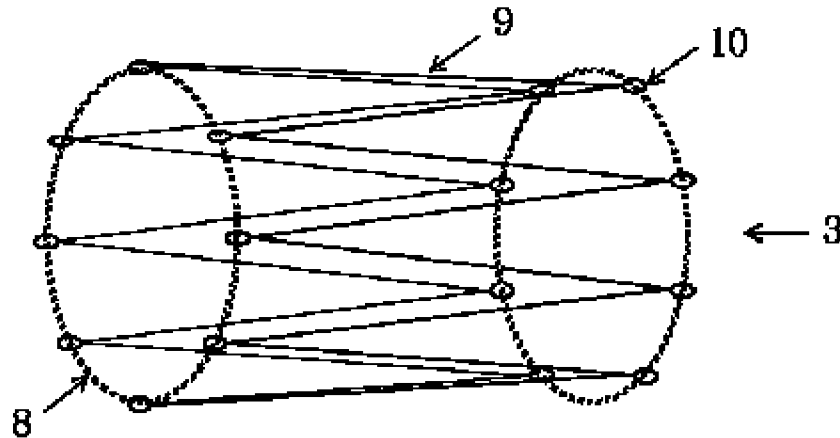


Fig. 2.

Moreover, both Hillstead and Kanazawa, whether considered independently or in combination, fail to disclose, teach, or suggest a stent with "nested" wave wire. Accordingly, even if a person with ordinary skill in the art modifies the stent disclosed in Hillstead with Kanazawa, the resulting combination would still fail to satisfy the "nested" wire waves as recited in claim 26. MPEP § 2143.

Claims 27-36 are dependent either indirectly or directly from claim 26.

"Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious." *Hartness Int's, Inc. v. Simplimatic Eng'g Co.*, 819 F. 2d 1100, 1108, 2 USPQ2d 1826, 1831 (Fed. Cir. 1987); *In re Abele*, 684 F.2d 902, 910, 214 USPQ 682, 689 (CCPA 1982); see also *In re Sernaker*, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983).

Therefore, these claims are patentable at least for the reasons cited regarding claim 26. Applicants respectfully request withdrawal of the rejection.

Conclusion

In view of the preceding arguments, Applicant submits that the Application is in condition for allowance. Favorable consideration and early action to that effect are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this Application in better condition for allowance the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

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